

## REMARKS

Applicant respectfully requests reconsideration of this application as amended.

### Office Action Rejections Summary

Claims 3-4, 5, 7-9, 14-16, 18, 19, 24, 28, 29, 31-33, 37, 40, 41, 42, 44-46 and 50 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,222,820 to Hamami ("Hamami") in view of U.S. Patent No. 6,424,629 of Rubino et al. ("Rubino").

Claims 2, 26, and 39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Hamami* in view of *Rubino* and in further view of "ATM/IP in the 21<sup>st</sup> Century" by *Phillips* ("Phillips").

Claims 6, 10-12, 17, 20-23, 30, 34-36, 43, and 47-49 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Hamami* in view of *Rubino* and in further view of "Monitoring and Control of ATM Networks Using Special Cells" by *Chen et al.* ("Chen").

### Status of Claims

Claims 2-13, 15-24, 26-37 and 39-50 are pending in the application. Claims 4, 28 and 41 have been amended to more properly define existing limitations. The amended claims are supported by the specification. No claims have been added. No new matter has been added. No claims have been canceled.

The specification has been amended to correct minor matters of form. No new matter has been added.

### Claim Rejections

Claims 3-4, 5, 7-9, 14-16, 18, 19, 24, 28, 29, 31-33, 37, 40, 41, 42, 44-46 and 50 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hamami in view of Rubino. It is submitted that claim 4 is patentable over the cited references.

The Office Action asserts that one of skill in the art would be motivated to modify Hamami with the teachings of Rubino because “both references disclose network communications in general, and more specifically ATM. Even more specifically, both references disclose detecting calls in general and more specifically OAM cells. Thus there is a strong motivation to combine the teachings as a whole for both references.” It is respectfully submitted that broad generalizations such as both references disclose network communications or ATM or OAM cells cannot be used in rejections of applications to provide a motivation to modify references by one of skill in the art under 35 U.S.C. §103(a). It is submitted that the Office Action must provide “a specific understanding or principle within the knowledge of the skilled artisan” that would have provided the motivation to combine the references in the purported manner. See MPEP 2143.01; *In re Kotzab*, 217 F.3d 1365 (Fed. Cir. 2000).

Moreover, applicant maintains that one of skill in the art would not be motivated to combine references as discussed in applicant’s previous response and not addressed by the current Office Action. Specifically, Hamami notes that although some data may be lost until a switchover to the redundant connection is complete, **this should not pose a major problem as the upper layers in the protocol stack at the end station are able to compensate for the data loss.** (Hamami, col. 2, lined 46-57). As such, one of skill in the art facing the problems confronted by the inventors of Hamami would not be motivated to look to the teachings of Rubino because Hamami does not consider data loss during a switchover to be a major problem that cannot be compensate for by end station

protocol stacks. If the examiner maintains the position that one of skill in the art would be motivated to combine the cited references, then the examiner is respectfully requested to rebut the applicants argument above by providing a “specific understanding or principle within the knowledge of the skilled artisan” to overcome the applicants argument. See MPEP 2143.01; In re Kotzab, 217 F.3d 1365 (Fed. Cir. 2000).

Furthermore, even if the references could be combined in the manner purported by the Office Action, a combination of the cited references would still lack a limitation of claim 4. Claim 4, as amended, recites:

A method comprising:

transmitting data along a first virtual circuit of a plurality of virtual circuits in a network and a plurality of detecting cells along said first virtual circuit and a second virtual circuit of said plurality of virtual circuits;

**detecting a failure** on said first virtual circuit **using a switch**; and  
switching transmission of said data from said first virtual circuit to a second virtual circuit of said plurality of virtual circuits in said network.

(emphasis added)

The Office Action asserts that Hamami “teaches performing monitoring at an ATM switch.” The Office Action cites to Figure 2 of Hamami for support of such assertion and states parenthetically “i.e., Hamami discloses both end user and switch redundancy.” (Office Action, 12/20/2003, page 3). It is respectfully submitted that such a conclusion is inapposite. First, the use of redundant switches, in and of itself, does not establish that monitoring is performed in the switches. Figure 2 of Hamami merely illustrates a network topology in which primary and redundant connections have been established from a source node. (Hamami, col. 4, lines 24-27; col. 5 line 62 to col. 6 line 32; Fig. 2). Furthermore, Hamami explicitly teaches that monitoring is performed by end users and not the switches as purported by the Office Action. In particular, Hamami teaches:

**It is important to note** that both the **originator** and the **destination** [i.e., the end users] of the call function **to monitor** the primary path for a failure. In addition, either the originator or the destination can detect a failure.

(Hamami, col. 9, lines 58-62)(emphasis added)(bracketing added)

In contrast, claim 4 includes the limitation of “detecting a failure on said first virtual circuit using a switch.” Therefore, applicant respectfully submits that claim 4 is patentable over the cited references.

Given that claims 3, 5 and 7-9 depend from claim 4, applicant submits that claims 3, 5 and 7-9 are also patentable over the cited references.

For reasons similar to those given above with respect to claim 4, applicant submits that claims 4, 14-16, 18, 19, 24, 28, 29, 31-33, 37, 40, 41, 42, 44-46 and 50 are patentable over the cited reference.

Claims 2, 26, and 39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hamami in view of Rubino and in further view of Phillips. It is submitted that Phillips fails to cure the deficiency noted above with respect to Hamami and Rubino and, therefore, claims 2, 26, and 39 are patentable over the cited references.

Claims 6, 10-12, 17, 20-23, 30, 34-36, 43, and 47-49 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hamami in view of Rubino and in further view of Chen. It is submitted that Chen fails to cure the deficiency noted above with respect to Hamami and Rubino and, therefore, claims 6, 10-12, 17, 20-23, 30, 34-36, 43, and 47-49 are patentable over the cited references.

In conclusion, applicant respectfully submits that in view of the arguments set forth herein, the applicable rejections have been overcome.

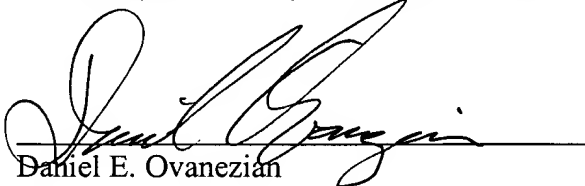
If the Examiner believes a telephone interview would expedite the prosecution of this application, the Examiner is invited to contact Daniel Ovanezian at (408) 720-8300.

If there are any additional charges, please charge our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 4/15, 2004

  
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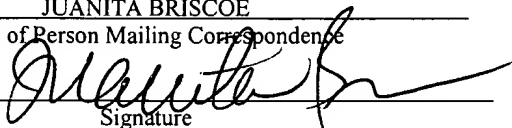
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